

TITLE 8—ALIENS AND NATIONALITY

CHAPTER 12—IMMIGRATION AND NATIONALITY

SUBCHAPTER I—GENERAL PROVISIONS

§ 1101. Definitions

(a) As used in this chapter—

[See main edition for text of (1) to (14)]

(15) The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

[See main edition for text of (A) to (G)]

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i)(a) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 1182(m)(1) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 1182(m)(2) of this title for the facility for which the alien will perform the services, or (b) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services (other than services as a registered nurse) of an exceptional nature requiring such merit and ability, and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency; or (ii) who is coming temporarily to the United States (a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of title 26 and agriculture as defined in section 203(f) of title 29, of a temporary or seasonal nature, or (b) to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training; and the alien spouse and minor children of any such alien

specified in this paragraph if accompanying him or following to join him;

[See main edition for text of (I) to (N), (16) to (43)]

(b) As used in subchapters I and II of this chapter—

[See main edition for text of (1)]

(2) The terms “parent”, “father”, or “mother” mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of an illegitimate child described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term “parent” does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

[See main edition for text of (3) to (5); (c) to (g)]

(As amended Nov. 21, 1989, Pub. L. 101-162, title VI, § 611(a), 103 Stat. 1038; Dec. 18, 1989, Pub. L. 101-238, § 3(a), 103 Stat. 2100.)

AMENDMENT OF SECTION

For termination of amendment by section 3(d) of Pub. L. 101-238, see Effective and Termination Dates of 1989 Amendments note below.

AMENDMENTS

1989—Subsec. (a)(15)(H)(i). Pub. L. 101-238 temporarily added subcl. (a), designated existing provisions as subcl. (b), and inserted “(other than services as a registered nurse)” after “to perform services”. See Effective and Termination Dates of 1989 Amendments note below.

Subsec. (b)(2). Pub. L. 101-162 inserted before period at end “, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of an illegitimate child described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term ‘parent’ does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption”.

EFFECTIVE AND TERMINATION DATES OF 1989 AMENDMENTS

Amendment by Pub. L. 101-238 applicable to classification petitions filed for nonimmigrant status only

during the 5-year period beginning on the first day of the 9th month beginning after Dec. 18, 1989, see section 3(d) of Pub. L. 101-238, set out as a note under section 1153 of this title.

Section 611(b) of Pub. L. 101-192 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1989, upon the expiration of the similar amendment made by section 210(a) of the Department of Justice Appropriations Act, 1989 (title II of Public Law 100-459, 102 Stat. 2203)."

SHORT TITLE OF 1989 AMENDMENT

Section 1 of Pub. L. 101-238 provided that: "This Act [amending sections 1101, 1160, and 1182 of this title, enacting provisions set out as notes under sections 1182, 1255, 1255a, and 1324a of this title, and amending provisions set out as a note under section 1255a of this title] may be cited as the 'Immigration Nursing Relief Act of 1989'."

EXTENSION OF H-1 IMMIGRATION STATUS FOR CERTAIN NONIMMIGRANTS EMPLOYED IN COOPERATIVE RESEARCH AND DEVELOPMENT PROJECTS AND COPRODUCTION PROJECTS

Pub. L. 101-189, div. A, title IX, § 937, Nov. 29, 1989, 103 Stat. 1538, provided that: "The Attorney General shall provide for the extension through December 31, 1991, of nonimmigrant status under section 101(a)(15)(X)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(X)(i)) for an alien to perform temporarily services relating to a cooperative research and development project or a coproduction project provided under a government-to-government agreement administered by the Secretary of Defense in the case of an alien who has had such status for a period of at least five years if such status has not expired as of the date of the enactment of this Act (Nov. 29, 1989) but would otherwise expire during 1989, 1990, or 1991, due only to the time limitations with respect to such status."

AMERASIAN IMMIGRATION

Pub. L. 100-461, title II, § 201, Oct. 1, 1988, 102 Stat. 2368-15, as amended by Pub. L. 101-167, title II, Nov. 21, 1989, 103 Stat. 1211, provided: "That the provisions of subsection (c) of section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as contained in section 101(e) of Public Law 100-202 (set out below), shall apply to an individual who (1) departs from Vietnam after the date of the enactment of this Act [Oct. 1, 1988] and before the end of the period described in subsection (a)(1)(B) of such section, and (2) is described in subsection (b) of such section, but who is issued an immigrant visa under section 201(b) or 203(a) of the Immigration and Nationality Act (8 U.S.C. 1151(b), 1153(a)) (rather than under subsection (a) of such section), or would be described in subsection (b) of such section if such section also applied to principal aliens who were citizens of the United States (rather than merely to aliens)".

Pub. L. 100-202, § 101(e) [title V, § 584], Dec. 22, 1987, 101 Stat. 1329-183, as amended by Pub. L. 101-167, title II, Nov. 21, 1989, 103 Stat. 1211, provided that:

"(a)(1) Notwithstanding any numerical limitations specified in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Attorney General may admit aliens described in subsection (b) to the United States as immigrants if—

"(A) they are admissible (except as otherwise provided in paragraph (2)) as immigrants, and

"(B) they are issued an immigrant visa and depart from Vietnam during the period beginning on March 22, 1988, and ending on September 30, 1990.

[See main edition for text of (2)]

"(3) Notwithstanding section 221(c) of the Immigration and Nationality Act (8 U.S.C. 1201(c)), immigrant

visas issued to aliens under this section shall be valid for a period of one year.

[See main edition for text of (b) to (e)]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1102, 1151, 1152, 1153, 1154, 1157, 1158, 1159, 1160, 1161, 1181, 1182, 1184, 1184a, 1186, 1187, 1201, 1251, 1252a, 1254, 1255, 1255a, 1255b, 1257, 1258, 1282, 1303, 1356, 1365 of this title; title 2 section 441e; title 7 section 2015; title 10 section 2864; title 18 sections 613, 831, 1691, 1203, 2331, 3077, 3142; title 19 section 58c; title 22 sections 1474, 2395, 2508, 3508, 5001; title 26 sections 871, 872, 1441, 3121, 3231, 3306, 7701; title 29 section 1802; title 42 sections 410, 1436a; title 45 sections 231, 351; title 46 section 2101; title 50 sections 424, 1801; title 50 App. sections 453, 456.

SUBCHAPTER II—IMMIGRATION

PART I—SELECTION SYSTEM

§ 1157. Annual admission of refugees and admission of emergency situation refugees

ESTABLISHING CATEGORIES OF ALIENS FOR PURPOSES OF REFUGEE DETERMINATIONS

Pub. L. 101-167, title V, § 599D, Nov. 21, 1989, 103 Stat. 1261, provided that:

"(a) IN GENERAL.—In the case of an alien who is within a category of aliens established under subsection (b), the alien may establish, for purposes of admission as a refugee under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), that the alien has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion by asserting such a fear and asserting a credible basis for concern about the possibility of such persecution.

"(b) ESTABLISHMENT OF CATEGORIES.—

"(1) For purposes of subsection (a), the Attorney General, in consultation with the Secretary of State and the Coordinator for Refugee Affairs, shall establish—

"(A) one or more categories of aliens who are or were nationals and residents of the Soviet Union and who share common characteristics that identify them as targets of persecution in the Soviet Union on account of race, religion, nationality, membership in a particular social group, or political opinion, and

"(B) one or more categories of aliens who are or were nationals and residents of Vietnam, Laos, or Cambodia and who share common characteristics that identify them as targets of persecution in such respective foreign state on such an account.

"(2)(A) Aliens who are (or were) nationals and residents of the Soviet Union and who are Jews or Evangelical Christians shall be deemed a category of alien established under paragraph (1)(A).

"(B) Aliens who are (or were) nationals of the Soviet Union and who are current members of, and demonstrate public, active, and continuous participation (or attempted participation) in the religious activities of, the Ukrainian Catholic Church or the Ukrainian Orthodox Church, shall be deemed a category of alien established under paragraph (1)(A).

"(C) Aliens who are (or were) nationals and residents of Vietnam, Laos, or Cambodia and who are members of categories of individuals determined, by the Attorney General in accordance with 'Immigration and Naturalization Service Worldwide Guidelines for Overseas Refugee Processing' (issued by the Immigration and Naturalization Service in August 1983) shall be deemed a category of alien established under paragraph (1)(B).

"(3) Within the number of admissions of refugees allocated for fiscal year 1990 for refugees who are

nationals of the Soviet Union under section 207(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1157(a)(3)], notwithstanding any other provision of law, the President shall allocate one thousand of such admissions for such fiscal year to refugees who are within the category of aliens described in paragraph (2)(B).

"(c) **WRITTEN REASONS FOR DENIALS OF REFUGEE STATUS.**—Each decision to deny an application for refugee status of an alien who is within a category established under this section shall be in writing and shall state, to the maximum extent feasible, the reason for the denial.

"(d) **PERMITTING CERTAIN ALIENS WITHIN CATEGORIES TO REAPPLY FOR REFUGEE STATUS.**—Each alien who is within a category established under this section and who (after August 14, 1938, and before the date of the enactment of this Act [Nov. 21, 1989]) was denied refugee status shall be permitted to reapply for such status. Such an application shall be determined taking into account the application of this section.

"(e) **PERIOD OF APPLICATION.**—

"(1) Subsections (a) and (b) shall take effect on the date of the enactment of this Act [Nov. 21, 1989] and shall only apply to applications for refugee status submitted before October 1, 1990.

"(2) Subsection (c) shall apply to decisions made after the date of the enactment of this Act and before October 1, 1990.

"(3) Subsection (d) shall take effect on the date of the enactment of this Act and shall only apply to reapplications for refugee status submitted before October 1, 1990.

"(f) **GAO REPORTS ON SOVIET REFUGEE PROCESSING.**—

"(1) The Comptroller General shall submit to the Committees on the Judiciary of the Senate and of the House of Representatives reports on the implementation of this section in Italy and the Soviet Union. Such reports shall include a review of—

"(A) the timeliness and length of individual interviews,

"(B) the adequacy of staffing and funding by the Department of State, the Immigration and Naturalization Service, and voluntary agencies, including the adequacy of staffing, computerization, and administration of the processing center in Washington,

"(C) the sufficiency of the proposed Soviet refugee processing system within the United States,

"(D) backlogs (if any) by ethnic or religious groups and the reasons any such backlogs exist,

"(E) the sufficiency of the means of distributing and receiving applications for refugee status in Moscow,

"(F) to the extent possible, a comparison of the cost of conducting refugee processing only in Moscow and such cost of processing in both Moscow and in Italy, and

"(G) an evaluation of efforts to phase out Soviet refugee processing in Italy.

"(2) The Comptroller [General] shall submit a preliminary report under paragraph (1) by December 31, 1989, and a final report by March 31, 1990. The final report shall include any recommendations which the Comptroller General may have regarding the need, if any, to revise or extend the application of this section."

PRESIDENTIAL DETERMINATION CONCERNING ADMISSION AND ADJUSTMENT OF STATUS OF REFUGEES

Determinations by the President pursuant to subsec. (a) of this section concerning the admission and adjustment of status of refugees for particular fiscal years were contained in the following Presidential Determinations:

Presidential Determination No. 90-2, Oct. 6, 1989, 54 F.R. 43035.

Presidential Determination No. 89-15, June 19, 1989, 54 F.R. 31493.

§ 1160. Special agricultural workers

(a) Lawful residence

[See main edition for text of (1) and (2)]

(3) Termination of temporary residence

(A) During the period of temporary resident status granted an alien under paragraph (1), the Attorney General may terminate such status only upon a determination under this chapter that the alien is deportable.

(B) Before any alien becomes eligible for adjustment of status under paragraph (2), the Attorney General may deny adjustment to permanent status and provide for termination of the temporary resident status granted such alien under paragraph (1) if—

(i) the Attorney General finds by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set out in section 1182(a)(19) of this title, or

(ii) the alien commits an act that (1) makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(2) of this section, or (II) is convicted of a felony or 3 or more misdemeanors committed in the United States.

[See main edition for text of (4) and (5)]

(b) Applications for adjustment of status

[See main edition for text of (1) to (5)]

(6) Confidentiality of information

Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application including a determination under subparagraph¹ (a)(3)(B), or for enforcement of paragraph (7).²

[See main edition for text of (B) and (C)]

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

[See main edition for text of (7); (c) to (h)]

(As amended Dec. 18, 1989, Pub. L. 101-238, § 4, 103 Stat. 2103.)

AMENDMENTS

1989—Subsec. (a)(3). Pub. L. 101-238, § 4(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(6)(A). Pub. L. 101-238, § 4(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "use the information furnished pursuant to an application filed under this section for any

¹ So in original. Probably should be "subsection".

² So in original. The period probably should be a comma.

purpose other than to make a determination on the application or for enforcement of paragraph (7)."

PART II—ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

§ 1182. Excludable aliens

[See main edition for text of (a) to (i)]

(m) Requirements for admission of nonimmigrant nurses during five-year period

(1) The qualifications referred to in section 1101(a)(15)(H)(i)(a) of this title, with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—

(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States or Canada;

(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

(2)(A) The attestation referred to in section 1101(a)(15)(H)(i)(a) of this title, with respect to a facility for which an alien will perform services, is an attestation as to the following:

(i) There would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such an alien or aliens.

(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.

(iii) The alien will be paid the wage rate for registered nurses similarly employed by the facility.

(iv) Either (I) the facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses, or (II) the facility is subject to an approved State plan for the recruitment and retention of nurses (described in paragraph (3)).

(v) There is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(vi) At the time of the filing of the petition for registered nurses under section

1101(a)(15)(H)(i)(a) of this title, notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses employed at the facility through posting in conspicuous locations.

A facility is considered not to meet clause (i) (relating to an attestation of a substantial disruption in delivery of health care services) if the facility, within the previous year, laid off registered nurses. Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before Dec. 18, 1989.

(B) For purposes of subparagraph (A)(iv)(I), each of the following shall be considered a significant step reasonably designed to recruit and retain registered nurses:

(i) Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

(ii) Providing career development programs and other methods of facilitating health care workers to become registered nurses.

(iii) Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area.

(iv) Providing adequate support services to free registered nurses from administrative and other nonnursing duties.

(v) Providing reasonable opportunities for meaningful salary advancement by registered nurses.

The steps described in this subparagraph shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of subparagraph (A)(iv)(I). Nothing herein shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable.

(C) Subject to subparagraph (E), an attestation under subparagraph (A) shall—

(i) expire at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor, and

(ii) apply to petitions filed during such 1-year period if the facility states in each such petition that it continues to comply with the conditions in the attestation.

(D) A facility may meet the requirements under this paragraph with respect to more than one registered nurse in a single petition.

(E)(i) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying facilities which have filed petitions for nonimmigrants under section 1101(a)(15)(H)(i)(a) of this title and, for each such facility, a copy of the facility's attestation under subparagraph (A) (and accompanying documentation) and each such petition filed by the facility.

(ii) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a facility's fail-

ure to meet conditions attested to or a facility's misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable cause to believe that a facility fails to meet conditions attested to.

(iii) Under such process, the Secretary shall provide, within 180 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in clause (iv). If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility (for which an attestation is made) has failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of at least 1 year for nurses to be employed by the facility.

(v) In addition to the sanctions provided under clause (iv), if the Secretary of Labor finds, after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(iii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such amounts of back pay as may be required to comply with such condition.

(3) The Secretary of Labor shall provide for a process under which a State may submit to the Secretary a plan for the recruitment and retention of United States citizens and immigrants who are authorized to perform nursing services as registered nurses in facilities in the State. Such a plan may include counseling and educating health workers and other individuals concerning the employment opportunities available to registered nurses. The Secretary shall provide, on an annual basis in consultation with the Secretary of Health and Human Services, for the approval or disapproval of such a plan, for purposes of paragraph (2)(A)(iv)(II). Such a plan may not be considered to be approved with respect to the facility unless the plan provides for the taking of significant steps described in paragraph (2)(A)(iv)(I) with respect to registered nurses in the facility.

(4) The period of admission of an alien under section 1101(a)(15)(H)(i)(a) of this title shall be for an initial period of not to exceed 3 years, subject to an extension for a period or periods, not to exceed a total period of admission of 5 years (or a total period of admission of 6 years

in the case of extraordinary circumstances, as determined by the Attorney General).

(5) For purposes of this subsection and section 1101(a)(15)(H)(i)(a) of this title, the term "facility" includes an employer who employs registered nurses in a home setting.

(As amended Dec. 18, 1989, Pub. L. 101-238, § 3(b), 103 Stat. 2100.)

AMENDMENT OF SECTION

For termination of amendment by section 3(d) of Pub. L. 101-238, see Effective and Termination Dates of 1989 Amendment note below.

AMENDMENTS

1989—Subsec. (m). Pub. L. 101-238 temporarily added subsec. (m). See Effective and Termination Dates of 1989 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1989 AMENDMENT

Section 3(d) of Pub. L. 101-238 provided that: "The amendments made by the previous provisions of this section [amending this section and section 1101 of this title] shall apply to classification petitions filed for nonimmigrant status only during the 5-year period beginning on the first day of the 9th month beginning after the date of the enactment of this Act [Dec. 18, 1989]."

IMPLEMENTATION OF REQUIREMENTS FOR ADMISSION OF NONIMMIGRANT NURSES DURING 5-YEAR PERIOD

Section 3(c) of Pub. L. 101-238 provided that: "The Secretary of Labor (in consultation with the Secretary of Health and Human Services) shall—

"(1) first publish final regulations to carry out section 212(m) of the Immigration and Nationality Act [8 U.S.C. 1182(m)] (as added by this section) not later than the first day of the 8th month beginning after the date of the enactment of this Act [Dec. 18, 1989]; and

"(2) provide for the appointment (by January 1, 1991) of an advisory group, including representatives of the Secretary, the Secretary of Health and Human Services, the Attorney General, hospitals, and labor organizations representing registered nurses, to advise the Secretary—

"(A) concerning the impact of this section on the nursing shortage,

"(B) on programs that medical institutions may implement to recruit and retain registered nurses who are United States citizens or immigrants who are authorized to perform nursing services,

"(C) on the formulation of State recruitment and retention plans under section 212(m)(3) of the Immigration and Nationality Act, and

"(D) on the advisability of extending the amendments made by this section [amending sections 1101 and 1182 of this title] beyond the 5-year period described in subsection (d) [set out above]."

PART V—DEPORTATION; ADJUSTMENT OF STATUS

§ 1252. Apprehension and deportation of aliens

REFERENCES IN TEXT

Section 278a of title 40, referred to in subsec. (c), was repealed by Pub. L. 100-678, § 7, Nov. 17, 1988, 102 Stat. 4052.

§ 1255. Adjustment of status of nonimmigrant to that of person admitted for permanent residence

ADJUSTMENT OF STATUS FOR CERTAIN H-1 NONIMMIGRANT NURSES

Pub. L. 101-238, § 2, Dec. 18, 1989, 103 Stat. 2099, provided that:

"(a) **IN GENERAL.**—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act [8 U.S.C. 1151, 1152] shall not apply to the adjustment of status under section 245 of such Act [8 U.S.C. 1255] of an immigrant, and the immigrant's accompanying spouse and children—

"(1) who, as of September 1, 1989, has the status of a nonimmigrant under paragraph (15)(H)(i) of section 101(a) of such Act [8 U.S.C. 1101(a)(15)(H)(i)] to perform services as a registered nurse,

"(2) who, for at least 3 years before the date of application for adjustment of status (whether or not before, on, or after, the date of the enactment of this Act [Dec. 18, 1989]), has been employed as a registered nurse in the United States, and

"(3) whose continued employment as a registered nurse in the United States meets the standards established for the certification described in section 212(a)(14) of such Act [8 U.S.C. 1182(a)(14)].

The Attorney General shall promulgate regulations to carry out this subsection by not later than 90 days after the date of the enactment of this Act.

"(b) **TRANSITION.**—For purposes of adjustment of status under section 245 of the Immigration and Nationality Act [8 U.S.C. 1255] in the case of an alien who, as of December 31, 1989, is present in the United States in the lawful status of a nonimmigrant under section 101(a)(15)(H)(i) of such Act [8 U.S.C. 1101(a)(15)(H)(i)] to perform services as a registered nurse, or who is the spouse or child of such an alien, such an alien shall be considered as having continued to maintain lawful status as such a nonimmigrant until the end of the 120-day period beginning on the date the Attorney General promulgates regulations carrying out subsection (a).

"(c) **APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.**—The definitions contained in the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall apply in the administration of this section. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

"(d) **APPLICATION PERIOD.**—The alien, and accompanying spouse and children, must apply for such adjustment within the 5-year period beginning on the date the Attorney General promulgates regulations required under subsection (a)."

ADJUSTMENT OF STATUS FOR CERTAIN SOVIET AND INDOCHINESE PAROLEES

Pub. L. 101-167, title V, § 599E, Nov. 21, 1989, 103 Stat. 1233, provided that:

"(a) **IN GENERAL.**—The Attorney General shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence if the alien—

"(1) applies for such adjustment,

"(2) has been physically present in the United States for at least 1 year and is physically present in the United States on the date the application for such adjustment is filed,

"(3) is admissible to the United States as an immigrant, except as provided in subsection (c), and

"(4) pays a fee (determined by the Attorney General) for the processing of such application.

"(b) **ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.**—The benefits provided in subsection (a) shall only apply to an alien who—

"(1) was a national of the Soviet Union, Vietnam, Laos, or Cambodia, and

"(2) was inspected and granted parole into the United States during the period beginning on August 15, 1988, and ending on September 30, 1990, after being denied refugee status.

"(c) **WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.**—The provisions of paragraphs (14), (15), (20), (21), (25), (28) (other than subparagraph (F)), and (32) of section 212(a) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(14), (15), (20), (21), (25), (28), (32)] shall not apply to adjustment of status under this section and the Attorney General may waive any other provision of such section (other than paragraph (23)(B), (27), (29), or (33)) with respect to such an adjustment for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(d) **DATE OF APPROVAL.**—Upon the approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission as a lawful permanent resident as of the date of the alien's inspection and parole described in subsection (b)(2).

"(e) **NO OFFSET IN NUMBER OF VISAS AVAILABLE.**—When an alien is granted the status of having been lawfully admitted for permanent residence under this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]."

§ 1255a. Adjustment of status of certain entrants before January 1, 1982, to that of person admitted for lawful residence

REFERENCES IN TEXT

The Education Consolidation and Improvement Act of 1987, referred to in subsec. (h)(4)(D), is subtitle D (§§ 551 to 598) of title V of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 483, as amended, which was classified principally to chapter 51 (§ 3801 et seq.) of Title 20, Education, prior to repeal by Pub. L. 100-297, title I, § 1003(a), Apr. 28, 1988, 102 Stat. 293. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of Title 20 and Tables.

USE OF CAPITAL ASSETS BY IMMIGRATION AND NATURALIZATION SERVICE

Pub. L. 101-162, title II, Nov. 21, 1989, 103 Stat. 1000, provided: "That for fiscal year 1990 and hereafter capital assets acquired by the Immigration Legalization account may be made available for the general use of the Immigration and Naturalization Service after they are no longer needed for immigration legalization purposes".

STATE LEGALIZATION IMPACT-ASSISTANCE GRANTS

Section 204 of Pub. L. 99-603, as amended by Pub. L. 190-525, § 2(k), Oct. 24, 1988, 102 Stat. 2612; Pub. L. 101-166, title II, Nov. 21, 1989, 103 Stat. 1174; Pub. L. 101-238, § 6(a), Dec. 18, 1989, 103 Stat. 2104, provided that:

"(a) **APPROPRIATION OF FUNDS.**—

"(1) **IN GENERAL.**—(A) Out of any money in the Treasury not otherwise appropriated, there are appropriated to carry out this section (and including Federal, State, and local administrative costs) \$1,900,000,000 (less the amount described in paragraph (2)) for fiscal year 1988 and for each of the three succeeding fiscal years.

"(B) Funds appropriated for fiscal year 1990 under this section are reduced by \$555,244,000.

"(C) For fiscal year 1992, there are appropriated to carry out this section for costs incurred on or after October 1, 1989 (including Federal, State, and local administrative costs) out of any money in the Treasury not otherwise appropriated, \$1,000,000,000 (less the amount described in paragraph (2)) less the amount made available for allotments to States under subsection (b) for fiscal year 1990.

[See main edition for text of (2); (b)]

“(c) PROVIDING ASSISTANCE.—(1) Of the amounts allotted to a State under this section, the State may only use such funds, in accordance with this section—

[See main edition for text of (A)]

“(B) for reimbursement of the costs of programs of public health assistance provided to any alien who is, or is applying on a timely basis to become, an eligible legalized alien,

“(C) to make payments to State educational agencies for the purpose of assisting local educational agencies of that State in providing educational services for eligible legalized aliens,

“(D) to make payments for public education and outreach (including the provision of information to individual applicants) to inform temporary resident aliens regarding—

“(i) the requirements of sections 210, 210A, and 245A of the Immigration and Nationality Act (8 U.S.C. 1160, 1181, 1255a) regarding the adjustment of resident status,

“(ii) sources of assistance for such aliens obtaining the adjustment of status described in clause (i), including educational, informational, referral services, and the rights and responsibilities of such aliens and aliens lawfully admitted for permanent residence,

“(iii) the identification of health, employment, and social services, and

“(iv) the importance of identifying oneself as a temporary resident alien to service providers, except that nothing in this subparagraph may be construed as authorizing the provision of client counseling or any other service which would assume responsibility for the alien's application for the adjustment of status described in clause (i),

“(E)(i) subject to clause (ii), to make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status,

“(ii) except that the State agencies shall not initiate such efforts until after such consultation with the Office of the Special Counsel for Unfair Immigration-Related Employment Practices as is appropriate to ensure, to the maximum extent feasible, a uniform program.

Subject to paragraph (2), the State may select the distribution of the use of such funds among such purposes.

“(2) [See main edition for text of (A) to (C)]

“(D) Of the amount allotted to a State with respect to any fiscal year, a State may not use more than—

“(i) 1 percent (or, if greater, \$100,000) for payments under paragraph (1)(D), and

“(ii) 1 percent (or, if greater, \$100,000) for payments under paragraph (1)(E).

[See main edition for text of (3); (d) to (j)]

[Pub. L. 101-238, § 6(b), Dec. 18, 1989, 103 Stat. 2105, provided that: “The amendments made by subsection (a) [amending section 204 of Pub. L. 99-603, set out above] shall apply to the use of allotments for fiscal years beginning with fiscal year 1989.”]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1160, 1161, 1324b of this title; title 20 section 3283; title 26 section 6039E; title 42 sections 602, 672, 1436a.

PART VIII—GENERAL PENALTY PROVISIONS

§ 1324a. Unlawful employment of aliens

PILOT PROJECTS FOR SECURE DOCUMENTS

Pub. L. 101-238, § 5, Dec. 18, 1989, 103 Stat. 2104, provided that:

“(a) CONSULTATION.—Before June 1, 1991, the Attorney General shall consult with State governments on

any proper State initiative to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a). The result of such consultations shall be reported, before September 1, 1991, to the Committees on the Judiciary of the Senate and House of Representatives of the United States.

“(b) ASSISTANCE FOR STATE INITIATIVES.—After such consultation described in subsection (a), the Attorney General shall make grants to, and enter into contracts with (to such extent or in such amounts as are provided in an appropriation Act), the State of California and at least 2 other States with large immigrant populations to promote any State initiatives to improve the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1)).

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General \$10,000,000 for fiscal year 1992 to carry out subsection (b).

“(d) REPORT REQUIRED.—The Attorney General shall report to the Committees on the Judiciary of the Senate and House of Representatives not later than August 1, 1993, on the security of State or local documents which would satisfy the requirements of section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a), and any improvements in such documents that have occurred as a result of this section.”

PART IX—MISCELLANEOUS

§ 1356. Disposition of moneys collected under the provisions of this subchapter

[See main edition for text of (a) to (m)]

(n) Reimbursement of administrative expenses; transfer of deposits to General Fund of United States Treasury

All deposits into the “Immigration Examinations Fee Account” shall remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the “Immigration Examinations Fee Account”..¹

[See main edition for text of (o) and (p)]

(As amended Nov. 21, 1989, Pub. L. 101-162, title II, 103 Stat. 1000.)

AMENDMENTS

1989—Subsec. (n). Pub. L. 101-162 struck out “in excess of \$50,000,000” after “Immigration Examinations Fee Account.”.

Pub. L. 101-162, which directed that “At least annually, deposits in the amount of \$50,000,000 shall be transmitted from the ‘Immigration Examinations Fee Account’ to the General Fund of the Treasury of the United States” be struck out, was executed by striking out “At least annually, deposits in the amount of \$50,000,000 shall be transferred from the ‘Immigration Examinations Fee Account’ to the General Fund of the Treasury of the United States” after “‘Immigration Examinations Fee Account’” as the probable intent of Congress.

¹ So in original.

**SUBCHAPTER III—NATIONALITY AND
NATURALIZATION****PART II—NATIONALITY THROUGH
NATURALIZATION****§ 1430. Married persons and employees of certain
nonprofit organizations****REQUIREMENTS FOR CITIZENSHIP FOR STAFF OF UNITED
STATES ARMY RUSSIAN INSTITUTE**

Pub. L. 101-193, title V, § 506, Nov. 30, 1989, 103 Stat. 1709, provided that:

"(a) For purposes of section 319(c) of the Immigration and Nationality Act (8 U.S.C. 1430(c)), the United States Army Russian Institute, located in Garmisch, Federal Republic of Germany, shall be considered to be an organization described in clause (1) of this section.

"(b) Subsection (a) shall apply with respect to periods of employment before, on, or after the date of the enactment of this Act (Nov. 30, 1989).

"(c) No more than two persons per year may be naturalized based on the provisions of subsection (a).

"(d) Each instance of naturalization based on the provisions of subsection (a) shall be reported to the Committees on the Judiciary of the Senate and House of Representatives and to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives prior to such naturalization."

SUBCHAPTER IV—REFUGEE ASSISTANCE**§ 1522. Authorization for programs for domestic re-
settlement of and assistance to refugees****SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1523, 1524 of this title; title 29 sections 1791a, 1791d; title 42 sections 1382, 1396a.